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of the

Eighty-First General Assembly

of the

State of Iowa

HELD AT DES MOINES, THE CAPITAL OF THE STATE

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IN THE ONE HUNDRED SIXTIETH YEAR OF THE STATE

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**CHAPTER 1001**

EMINENT DOMAIN

*H.F. 2351*

**AN ACT** relating to government authority, including eminent domain authority and condemnation procedures, and other properly related matters, and including effective and applicability provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 6A.4, subsection 2, unnumbered paragraph 1, Code 2005, is amended to read as follows:

Upon the owner or lessee of lands, which have no public or private way to the lands, for the purpose of providing a public way, ~~not exceeding forty feet in width~~, which will connect with an existing public road. The condemned public way shall not exceed forty feet in width when such lands are agricultural or have a single residence located on them. For all other uses, the condemned public way shall not exceed sixty-six feet. The condemned public way shall be located on a division, subdivision or “forty” line, or immediately adjacent thereto, and along the line which is the nearest feasible route to an existing public road, or along a route established for a period of ten years or more by an easement of record or by use and travel to and from the property by the owner and the general public. The public way shall not interfere with buildings, orchards, or cemeteries. When passing through enclosed lands, the public way shall be fenced on both sides by the condemner upon request of the owner of the condemned land. The condemner or the condemner’s assignee, shall provide easement for access to the owner of property severed by the condemnation. The public way shall be maintained by the condemner or the condemner’s assignee, and shall not be considered any part of the primary or secondary road systems.

Sec. 2. Section 6A.21, subsection 2, Code 2005, is amended to read as follows:

2. The limitation on the definition of public use, public purpose, or public improvement does not apply to a ~~slum area or blighted area as defined in section 403.17, or to agricultural land acquired for industry as that term is defined in section 260E.2,~~ or to the establishment, relocation, or improvement of a road pursuant to chapter 306, or to the establishment of a railway under the supervision of the department of transportation as provided in section 327C.2, or to an airport as defined in section 328.1, or to land acquired in order to replace or mitigate land used in a road project when federal law requires replacement or mitigation. This limitation also does not apply to utilities, ~~or persons, companies, or corporations~~ under the jurisdiction of the Iowa utilities board in the department of commerce or to any other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain.

Sec. 3. NEW SECTION. 6A.22 ADDITIONAL LIMITATIONS ON EXERCISE OF POWER — DEFINITIONS.

1. In addition to the limitations in section 6A.21, the authority of an acquiring agency to condemn any private property through eminent domain may only be exercised for a public purpose, public use, or public improvement. However, if the owner of the property consents to the condemnation, the property may be condemned for any purpose.

2. a. “Public use”, “public purpose”, or “public improvement” means one or more of the following:

(1) The possession, occupation, and enjoyment of property by the general public or governmental entities.

(2) The acquisition of any interest in property necessary to the function of a public or private utility, common carrier, or airport or airport system.

(3) Private use that is incidental to the public use of the property, provided that no property shall be condemned solely for the purpose of facilitating such incidental private use.

(4) The acquisition of property pursuant to chapter 455H.

(5) The acquisition of property for redevelopment purposes and to eliminate slum or blighted conditions in that portion of an urban renewal area designated as a slum or blighted area if each parcel, or any improvements thereon, for which condemnation is sought is determined by the governing body of the municipality to be in a slum or blighted condition. However, for a project or acquisition plan adopted by the governing body of a municipality after due deliberation and public input, if seventy-five percent or more of the area included in the plan consists of property in a slum or blighted condition at the time the plan was established, the entire project or acquisition plan area is subject to condemnation by the municipality. The project or acquisition plan area shall only include the adjacent and contiguous parcels necessary for the completion of planned activities for a specific business or housing project. Before a municipality exercises its eminent domain authority to acquire properties in a project or acquisition plan area that are not in a slum or blighted condition, the municipality shall be required to adopt a resolution by a two-thirds majority to authorize the acquisition of such property by eminent domain. The resolution shall make a finding that includes at a minimum all of the following:

(a) The taking of such property is necessary to achieve the project or acquisition plan objectives.

(b) The taking of property for the project or acquisition plan will eliminate or rehabilitate the slum and blighted conditions in the area.

(c) If the specific project is for a business, the proposed project or acquisition plan will confer economic benefits upon the municipality.

For purposes of this subparagraph (5):

(a) “Blighted condition” means the presence of a substantial number of slum or deteriorated structures; insanitary or unsafe conditions; excessive and uncorrected deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger

life or property by fire and other causes; or the existence of conditions which retard the provision of housing accommodations for low or moderate income families, or is a menace to the public health and safety in its present condition and use.

(b) "Slum condition" means a condition conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, or detrimental to the public health and safety due to a predominance of buildings or improvements, whether residential or nonresidential, by reason of the following: by reason of dilapidation, deterioration that is excessive and uncorrected, age or obsolescence; by reason of inadequate provision for sanitation; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or by reason of any combination of such factors.

(c) In no case shall land that is agricultural land be determined to be in a slum condition or blighted condition.

(d) "Project or acquisition plan" means the planned activities of a municipality to rehabilitate or redevelop specific property in that portion of an urban renewal area designated as a slum or blighted area pursuant to chapter 403. The planned activities may include the sale and acquisition of property; demolition and removal of buildings and improvements; construction, repair, and rehabilitation of buildings or other improvements; and installation, construction, or reconstruction of streets and utilities.

(e) "Economic benefits" means the creation of new employment opportunities or the retention of employment opportunities.

b. Except as specifically included in the definition in paragraph "a", "public use" or "public purpose" or "public improvement" does not mean economic development activities resulting in increased tax revenues, increased employment opportunities, privately owned or privately funded housing and residential development, privately owned or privately funded commercial or industrial development, or the lease of publicly owned property to a private party.

c. Notwithstanding paragraph "a":

(1) If private property is to be condemned for development or creation of a lake, only that number of acres justified as necessary for a surface drinking water source, and not otherwise acquired, may be condemned. In addition, the acquiring agency shall conduct a review of prudent and feasible alternatives to provision of a drinking water source prior to making a determination that such lake development or creation is reasonable and necessary. Development or creation of a lake as a surface drinking water source includes all of the following:

(a) Construction of the dam, including sites for suitable borrow material and the auxiliary spillway.

(b) The water supply pool.

(c) The sediment pool.

(d) The flood control pool.

(e) The floodwater retarding pool.

(f) The surrounding area upstream of the dam no higher in elevation than the top of the dam's elevation.

(g) The appropriate setback distance required by state or federal laws and regulations to protect drinking water supply.

For purposes of this subparagraph (1), "number of acres justified as necessary for a surface drinking water source" means according to guidelines of the United States natural resource conservation service and according to analyses of surface drinking water capacity needs conducted by one or more registered professional engineers.

(2) The use of eminent domain authority to acquire private property in the unincorporated area of a county for use as an airport, airport system, or aviation facilities is prohibited, notwithstanding any provision of the law to the contrary, if the property to be condemned is located outside the geographic boundaries of the city or county operating the airport, airport system, or aviation facilities or outside the geographic boundaries of the member municipalities of the commission or authority. However, an acquiring agency may proceed with condemnation of property under these circumstances if the board of supervisors of the county where the

property for which condemnation is sought is located holds a public hearing on the matter and subsequent to the hearing approves, by resolution, the condemnation action. This subparagraph does not apply if any of the following conditions is met:

(a) The property to be condemned is for an improvement to an existing airport, airport system, or aviation facilities if such improvement is required by federal law, regulation, or order or if such improvement is included in an airport layout plan approved by the federal aviation administration for the existing site of the airport, airport system, or aviation facilities.

(b) The property to be condemned has been zoned by a city or county for use as an airport, airport system, or aviation facilities.

(c) The property to be condemned is for a proposed airport, airport system, or aviation facilities that as of July 1, 2006, was designated in the federal aviation administration national plan for integrated airport services, and the property to be condemned is located within the county where at least one of the cities that will participate in operation of the proposed airport, airport system, or aviation facilities is located.

Sec. 4. NEW SECTION. 6A.22A EXCEPTION FOR CERTAIN URBAN RENEWAL AREAS.

1. The requirement in section 6A.22, subsection 2, paragraph "a", subparagraph (5), that eminent domain authority be exercised on a parcel-by-parcel basis and the exception in that subparagraph (5) for project or acquisition plans with seventy-five percent or more of the area consisting of property in a slum or blighted condition, take effect October 1, 2006. However, if an acquiring agency adopts a resolution after the date of enactment of this Act but before October 1, 2006, approving acquisition of property by eminent domain in that portion of an urban renewal area designated as a slum or blighted area, such requirement or exception shall not apply to any condemnation application seeking to condemn that property if the application is filed before October 1, 2007, with the chief judge of the judicial district of the county in which the property is located.

2. This section is repealed December 31, 2007.

Sec. 5. NEW SECTION. 6A.23 JUDICIAL REVIEW OF EMINENT DOMAIN AUTHORITY.

1. An owner of property described in an application for condemnation may bring an action challenging the exercise of eminent domain authority or the condemnation proceedings. Such action shall be commenced within thirty days after service of notice of assessment pursuant to section 6B.8 by the filing of a petition in district court. Service of the original notice upon the acquiring agency shall be as required in the rules of civil procedure. In addition to the owner of the property, a contract purchaser of record of the property or a tenant occupying the property under a recorded lease shall also have standing to bring such action.

2. An acquiring agency that proposes to acquire property by eminent domain may file a petition in district court seeking a determination and declaration that its finding of public use, public purpose, or public improvement necessary to support the taking meets the definition of those terms. The action shall be commenced by the filing of a petition identifying all property owners whose property is proposed to be acquired, any contract purchaser of record of the property, and any tenant known to be occupying the property, and including a description of the properties proposed to be acquired and a statement of the public use, public purpose, or public improvement supporting the acquisition of the property by eminent domain. The original notice shall be served as required by the rules of civil procedure on each property owner named in the petition and on any contract purchaser of record of the property and on any tenant occupying the property under a recorded lease. Such action may be commenced by an acquiring agency at any time prior to the filing of an application for condemnation pursuant to section 6B.3.

3. For any action brought under this section, the burden of proof shall be on the acquiring agency to prove by a preponderance of the evidence that the finding of public use, public purpose, or public improvement meets the definition of those terms. If a property owner or a con-

tract purchaser of record or a tenant occupying the property under a recorded lease prevails in an action brought under this section, the acquiring agency shall be required to pay the costs, including reasonable attorney fees, of the adverse party.

Sec. 6. Section 6B.2B, Code 2005, is amended to read as follows:

**6B.2B ACQUISITION NEGOTIATION STATEMENT OF RIGHTS.**

The acquiring agency shall make a good faith effort to negotiate with the owner to purchase the private property or property interest before filing an application for condemnation or otherwise proceeding with the condemnation process. An acquiring agency shall not make an offer to purchase the property or property interest that is less than the fair market value the acquiring agency has established for the property or property interest pursuant to the appraisal required in section 6B.45 or less than the value determined under the acquiring agency's waiver procedure established pursuant to section 6B.54, subsection 2, for acquisition of property with a low fair market value. A purchase offer made by an acquiring agency shall include provisions for payment to the owner of expenses, including relocation expenses, expenses listed in section 6B.54, subsection 10, and other expenses required by law to be paid by an acquiring agency to a condemnee. However, ~~an~~ in the alternative, the acquiring agency may make, and the owner may accept, a purchase offer from the acquiring agency that is an amount equal to one hundred thirty percent of the appraisal amount plus payment to the owner of expenses listed in section 6B.54, subsection 10, once those expenses have been determined. If the owner accepts such a purchase offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. An acquiring agency need not make an offer in excess of that amount the amounts described in this section in order to satisfy the requirement to negotiate in good faith. ~~An acquiring agency is deemed to have met the requirements of this section if the acquiring agency complies with section 6B.54.~~ The option to make an alternative purchase offer does not apply when property is being acquired for street and highway projects undertaken by the state, a county, or a city.

Sec. 7. **NEW SECTION.** 6B.2D NOTICE OF INTENT TO APPROVE ACQUISITION OF PROPERTY BY EMINENT DOMAIN.

1. The acquiring agency shall send notice of a proposed resolution, motion, or other document authorizing acquisition of property by eminent domain to each property owner whose property is proposed to be acquired by eminent domain, to any contract purchaser of record of the property, and to any tenant known to be occupying the property at least fourteen days prior to the date of the meeting at which such proposed authorization will be considered for adoption by the acquiring agency. The notice shall include the date, time, and place of the meeting and a statement that the persons receiving the notice have a right to attend the meeting and to voice objection to the proposed acquisition of the property. The notice shall include a copy of the proposed resolution, motion, or other document authorizing acquisition by eminent domain. The notice shall also include the same statement of individual rights that is required by section 6B.2A.

2. This section shall not apply to the following:

- a. Street and highway projects undertaken by the state, a county, or a city.
- b. Projects undertaken by a municipal utility.
- c. Projects undertaken by a city enterprise providing services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, or solid waste disposal.
- d. Projects undertaken by a county enterprise providing services described in section 331.461, subsection 2, paragraphs "b" and "f".

Sec. 8. Section 6B.3, subsection 1, paragraph d, Code 2005, is amended to read as follows:

d. The purpose for which condemnation is sought. ~~For purposes of section 6B.4A, if condemnation of agricultural land is sought by a city or county, or an agency of a city or county, for location of an industry as that term is defined in section 260E.2, the application shall so state. However, the city or county shall not be required to disclose information on an industrial prospect with which the city or county is currently negotiating.~~

Sec. 9. Section 6B.3, subsection 2, Code 2005, is amended to read as follows:

2. The applicant shall mail a copy of the application by certified mail to the owner at the owner's last known address, to any contract purchaser of record of the property, to any tenant known to be occupying the property, and to any record lienholder or encumbrancer of the property at the lienholder's or encumbrancer's last known address. The applicant shall also cause the application to be published once in a newspaper of general circulation in the county, not less than four nor more than twenty days before the meeting of the compensation commission to assess the damages. Service of the application by publication shall be deemed complete on the day of publication.

In lieu of mailing and publishing the application, the applicant may cause the application to be served upon the owner, contract purchaser of record, tenant known to be occupying the property, record lienholders, and record encumbrancers of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. The application shall be mailed and published or served, as above provided, prior to or contemporaneously with the mailing and publication or service of the list of compensation commissioners as provided in section 6B.4.

Sec. 10. Section 6B.3, subsection 3, unnumbered paragraph 2, Code 2005, is amended to read as follows:

When indexed, the proceeding is considered pending so as to charge all persons not having an interest in the property with notice of its pendency, and while pending no interest can be acquired by the third parties in the property against the rights of the applicant. If the appraisal of damages by the commission pursuant to section 6B.14 is not made within one hundred twenty days of indexing, the proceedings instituted under this section are terminated and all rights and interests of the applicant arising out of the application for condemnation terminate. The applicant may reinstitute a new condemnation proceeding at any time. The reinstated proceedings are entirely new proceedings and not a revival of the terminated proceeding.

Sec. 11. NEW SECTION. 6B.3A CHALLENGE BY OWNER.

An owner of property described in an application for condemnation may bring an action to challenge the exercise of eminent domain authority or the condemnation proceedings in the district court of the county in which the private property is situated as provided in section 6A.23.

Sec. 12. Section 6B.8, Code 2005, is amended to read as follows:

6B.8 NOTICE OF ASSESSMENT.

The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, thirty days' notice, in writing. The notice shall specify the day and the hour when the compensation commission will meet, view the premises, and assess the damages. The notice shall be personally served upon all necessary parties in the same manner provided by the Iowa rules of civil procedure for the personal service of original notice. If a city or county, or an agency of a city or county, is seeking to condemn agricultural land for an industry as that term is defined in section 260E.2, the notice shall inform the landowner that the landowner may request that the compensation commission review the application as provided in section 6B.4A.

Sec. 13. Section 6B.14, unnumbered paragraph 2, Code 2005, is amended to read as follows:

Prior to the meeting of the commission, the commission or a commissioner shall not communicate with the applicant, property owner, or tenant, or their agents, regarding the condemnation proceedings. The commissioners shall meet in open session to view the property and to receive evidence, but may deliberate in closed session. When deliberating in closed session, the meeting is closed to all persons who are not commissioners except for personnel from the

sheriff's office if such personnel is requested by the commission. After deliberations commence, the commission and each commissioner is prohibited from communicating with any party to the proceeding, ~~unless such communication occurs in the presence of or with the consent of the property owner and the other parties who appeared before the commission.~~ However, if the commission is deliberating in closed session, and after deliberations commence the commission requires further information from a party or a witness, the commission shall notify the property owner and the acquiring agency that they are allowed to attend the meeting at which such additional information shall be provided but only for that period of time during which the additional information is being provided. The property owner and the acquiring agency shall be given a reasonable opportunity to attend the meeting. The commission shall keep minutes of all its meetings showing the date, time, and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

Sec. 14. Section 6B.14, Code 2005, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 2:

NEW UNNUMBERED PARAGRAPH. In determining fair market value of property, the commissioners shall not consider only the assessed value assigned to such property for purposes of property taxation.

Sec. 15. Section 6B.33, Code 2005, is amended to read as follows:

6B.33 COSTS AND ATTORNEY FEES.

The ~~applicant~~ acquiring agency shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs, including the reasonable cost of one appraisal, incurred by the condemnee as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the applicant prior to condemnation. The condemnee shall submit an application for fees and costs prior to adjournment of the final meeting of the compensation commission held on the matter. ~~The applicant~~ acquiring agency shall file with the sheriff an affidavit setting forth the most recent offer made to the person whose property is sought to be condemned. Members of such commissions shall receive a per diem of two hundred dollars and actual and necessary expenses incurred in the performance of their official duties. ~~The applicant~~ acquiring agency shall reimburse the county sheriff for the per diem and expense amounts paid by the sheriff to the members. ~~The applicant~~ acquiring agency shall reimburse the owner for the expenses the owner incurred for recording fees, penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the property, and for similar expenses incidental to conveying the property to the ~~applicant~~ acquiring agency. ~~The applicant~~ acquiring agency shall also pay all costs occasioned by the appeal, including reasonable attorney fees and the reasonable cost incurred by the property owner for one appraisal to be taxed by the court, unless on the trial thereof the same or a lesser amount of damages is awarded than was allowed by the tribunal from which the appeal was taken.

Sec. 16. Section 6B.42, subsection 1, paragraph a, Code 2005, is amended to read as follows:

a. The acquiring agency shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316, as if the acquiring agency were a displacing agency under that chapter.

Sec. 17. Section 6B.45, Code 2005, is amended to read as follows:

6B.45 MAILING COPY OF APPRAISAL.

When any real property or interest in real property is to be purchased, or in lieu thereof to be condemned, the acquiring agency or its agent shall submit to the person, corporation, or

entity whose property or interest in the property is to be taken, by ordinary mail, at least ten days prior to the date upon which the acquiring agency or its agent contacts the property owner to commence negotiations, a copy of the appraisal in its entirety upon such real property or interest in such real property prepared for the acquiring agency or its agent, which shall include, at a minimum, an itemization of the appraised value of the real property or interest in the property, any buildings on the property, all other improvements including fences, severance damages, and loss of access. In determining fair market value of property, the acquiring agency shall not consider only the assessed value assigned to such property for purposes of property taxation. The appraisal sent to the condemnee shall be that appraisal upon which the condemnor will rely to establish an amount which the condemnor believes to be just compensation for the real property. All other appraisals made on the property as a result of the condemnation proceeding shall be made available to the condemnee upon request. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days prior to negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component. An acquiring agency may obtain a signed written waiver from the landowner to allow negotiations to commence prior to the expiration of the applicable waiting period for the commencement of negotiations.

Only the appraisal prepared under this section shall be forwarded to the compensation commission by the acquiring agency.

Sec. 18. Section 6B.54, Code 2005, is amended to read as follows:

6B.54 ~~FEDERALLY ASSISTED PROJECT AND DISPLACING ACTIVITIES~~ — ACQUISITION POLICIES FOR ACQUIRING AGENCIES.

~~For any project or displacing activity that has received or will receive federal financial assistance as defined in section 316.1, for any state-funded projects, or for any other public use, public purpose, or public improvement for which condemnation is sought, an acquiring agency shall, at a minimum, satisfy the following policies:~~

1. Every reasonable and good faith effort shall be made to acquire expeditiously real property by negotiation as provided in section 6B.2B.

2. Real property shall be appraised as required by section 6B.45 before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during an inspection of the property, except that an acquiring agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days before negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component.

3. Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation for the real property, and shall make a prompt offer to acquire the property for the full amount established by the agency. In no event shall the amount be less than the lowest appraisal of the fair market value of the acquiring agency has established for the property or property interest pursuant to the appraisal required in section 6B.45 or less than the value determined under the acquiring agency's waiver procedure established pursuant to subsection 2. A purchase offer made by an acquiring agency shall include provisions for payment to the owner of expenses, including relocation expenses, expenses listed in subsection 10, and other expenses required by law to be paid by an acquiring agency to a condemnee. However, in the alternative, the acquiring agency may make, and the owner may accept, a purchase offer from the acquiring agency that is an amount equal to one hundred thirty percent of the appraisal amount plus payment to the owner of expenses listed in subsection 10, once those expenses have been determined. If the owner accepts such a purchase offer, the owner is barred from claiming payment from the acquiring agency for any

other expenses allowed by law. In the case of a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, the amount shall not be less than the amount indicated by the methods and factors used in arriving at an offered price for a voluntary easement. The option to make an alternative purchase offer does not apply when property is being acquired for street and highway projects undertaken by the state, a county, or a city.

4. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move the person's business or farm operation without at least ninety days' written notice of the date by which the move is required.

5. If after damages have been finally determined and paid, an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

6. In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

7. If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

8. If the acquisition of only a portion of property would leave the owner with an uneconomical remnant, the acquiring agency shall offer to acquire that remnant. For the purposes of this chapter, an "uneconomical remnant" is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, where the acquiring agency determines that the parcel has little or no value or utility to the owner.

9. A person whose real property is being acquired in accordance with this chapter, after the person has been fully informed of the person's right to receive just compensation for the property, may donate the property, any part of the property, any interest in the property, or any compensation paid for it as the person may determine.

10. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, the acquiring agency shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses the owner necessarily incurred for all of the following:

a. Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring agency.

b. Penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.

Payments and expenditures under this subsection are incident to and arise out of the program or project for which the acquisition activity takes place. Such payments and expenditures may be made from the funds made available for the program or project.

A person aggrieved by a determination as to the eligibility for or amount of a reimbursement may apply to have the matter reviewed by the acquiring agency or in accordance with section 316.9 if applicable.

11. An owner shall not be required to surrender possession of real property before the acquiring agency concerned pays the agreed purchase price.

12. After damages have been finally determined and paid, the acquiring agency may offer, and the owner may accept, an amount equal to thirty percent of the amount of damages plus payment to the owner of expenses listed in subsection 10, once those expenses have been determined. If the owner accepts such an offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. This subsection does not apply when property is being acquired for street and highway projects undertaken by the state, a county, or a city.

Sec. 19. Section 6B.55, unnumbered paragraph 1, Code 2005, is amended to read as follows:

For any program or project that has received or will receive federal financial assistance as defined in section 316.1, for any state-funded projects, or for any other public use, public purpose, or public improvement for which condemnation is sought, an acquiring agency shall at a minimum satisfy the following policies:

Sec. 20. Section 6B.56, subsection 1, Code 2005, is amended to read as follows:

1. If real property condemned pursuant to this chapter is not used for the purpose stated in the application filed pursuant to section 6B.3 and the ~~condemner~~ acquiring agency seeks to dispose of the real property, the ~~condemner~~ acquiring agency shall first offer the property for sale to the prior owner of the condemned property as provided in this section. If real property condemned pursuant to this chapter is used for the purpose stated in the application filed pursuant to section 6B.3 and the acquiring agency seeks to dispose of the real property by sale to a private person or entity within five years after acquisition of the property, the acquiring agency shall first offer the property for sale to the prior owner of the condemned property as provided in this section. For purposes of this section, the prior owner of the real property includes the successor in interest of the real property.

Sec. 21. Section 6B.56, subsection 2, Code 2005, is amended to read as follows:

2. Before the real property may be offered for sale to the general public, the ~~condemner~~ acquiring agency shall notify the prior owner of the real property condemned in writing of the ~~condemner's~~ acquiring agency's intent to dispose of the real property, of the current appraised value of the real property, and of the prior owner's right to purchase the real property within sixty days from the date the notice is served at a price equal to the current appraised value of the real property or the fair market value of the property at the time it was acquired by the acquiring agency from the prior owner plus cleanup costs incurred by the acquiring agency, whichever is less. However, the current appraised value of the real property shall be the purchase price to be paid by the previous owner if any other amount would result in a loss of federal funding for projects funded in whole or in part with federal funds. The notice sent by the ~~condemner~~ acquiring agency as provided in this subsection shall be filed with the office of the recorder in the county in which the real property is located.

For purposes of this subsection, "cleanup costs" means costs incurred to abate a nuisance or a public nuisance as those terms are defined in chapters 657 and 657A and costs incurred to recycle and remediate land pursuant to chapter 455H.

Sec. 22. Section 6B.56, subsection 3, Code 2005, is amended to read as follows:

3. If the prior owner elects to purchase the real property at the price established in subsection 2, before the expiration of the sixty-day period, the prior owner shall notify the ~~condemner~~ acquiring agency in writing of this intention and file a copy of this notice with the office of the recorder in the county in which the real property is located.

Sec. 23. NEW SECTION. 6B.56A DISPOSITION OF CONDEMNED PROPERTY — FIVE-YEAR TIME PERIOD.

1. When five years have elapsed since property was condemned and the property has not been used for the purpose stated in the application filed pursuant to section 6B.3, and the acquiring agency has not taken action to dispose of the property pursuant to section 6B.56, the acquiring agency shall, within sixty days, adopt a resolution reaffirming the purpose for which the property will be used or offering the property for sale to the prior owner at a price as provided in section 6B.56. If the resolution adopted approves an offer of sale to the prior owner, the offer shall be made in writing and mailed by certified mail to the prior owner. The prior owner has one hundred eighty days after the offer is mailed to purchase the property from the acquiring agency.

2. If the acquiring agency has not adopted a resolution described in subsection 1 within the

sixty-day time period, the prior owner may, in writing, petition the acquiring agency to offer the property for sale to the prior owner at a price as provided in section 6B.56. Within sixty days after receipt of such a petition, the acquiring agency shall adopt a resolution described in subsection 1. If the acquiring agency does not adopt such a resolution within sixty days after receipt of the petition, the acquiring agency is deemed to have offered the property for sale to the prior owner.

3. The acquiring agency shall give written notice to the owner of the right to purchase the property under this section at the time damages are paid to the owner.

4. This section does not apply to property acquired for street and highway projects undertaken by the state, a county, or a city.

Sec. 24. Section 6B.57, Code 2005, is amended to read as follows:

6B.57 PROCEDURAL COMPLIANCE.

If an acquiring agency makes a good faith effort to serve, send, or provide the notices or documents required under this chapter to the owner and any contract purchaser of private property that is or may be the subject of condemnation, or to any tenant known to be occupying such property if notices or documents are required to be served, sent, or provided to such a person, but fails to provide the notice or documents to the owner and any contract purchaser, or to any tenant known to be occupying the property if applicable, such failure shall not constitute grounds for invalidation of the condemnation proceeding if the chief judge of the judicial district determines that such failure can be corrected by delaying the condemnation proceedings to allow compliance with the requirement or such failure does not unreasonably prejudice the owner or any contract purchaser.

Sec. 25. Section 6B.58, Code 2005, is amended to read as follows:

6B.58 ACQUIRING AGENCY — DEFINITION.

For purposes of this chapter, an “acquiring agency” means the state of Iowa or any person or entity conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain. In the exercise of eminent domain power, the words “applicant” and “condemner” mean acquiring agency as defined in this section, unless the context clearly requires otherwise.

Sec. 26. NEW SECTION. 6B.60 RENTAL CHARGES PROHIBITED.

Rent shall not be charged to a person in possession of the property and shall not accrue against the property owner until all or a portion of the compensation commission award has been paid to the condemnee pursuant to section 6B.25.

Sec. 27. NEW SECTION. 6B.61 APPROVAL OF LOCAL ELECTED OFFICIALS REQUIRED.

Notwithstanding any provision of law to the contrary, any entity created by or on behalf of one or more political subdivisions and granted, by statute, eminent domain authority to acquire property shall not exercise such authority outside the jurisdictional limits of the political subdivisions participating in the entity at the time of such exercise of authority without first presenting the proposal to acquire such property by eminent domain to the board of supervisors of each county where the property is located and such proposal receives the approval, by resolution, of each applicable board of supervisors. However, this section does not apply to an entity created by or on behalf of one or more political subdivisions if the entity is authorized by statute to act as a political subdivision and if this section would limit the ability of the entity to comply with requirements or limitations imposed by the Internal Revenue Code to preserve the tax exemption of interest payable on bonds or obligations of the entity acting as a political subdivision.

This section does not apply to a person issued a certificate of public convenience, use, and necessity under chapter 476A. This section does not apply to property condemned by or on

behalf of a multistate entity created to provide drinking water that has received or is receiving federal funds, but only if such property is to be acquired for water transmission and service lines, pump stations, water storage tanks, meter houses and vaults, related appurtenances, or supporting utilities.

Sec. 28. Section 28F.11, Code 2005, is amended to read as follows:  
28F.11 EMINENT DOMAIN.

Any public agency participating in an agreement authorizing the joint exercise of governmental powers pursuant to this chapter may exercise its power of eminent domain to acquire interests in property, under provisions of law then in effect and applicable to the public agency, for the use of the entity created to carry out the agreement, provided that the power of eminent domain is not used to acquire interests in property which is part of a system of facilities in existence, under construction, or planned, for the generation, transmission or sale of electric power. In the exercise of the power of eminent domain, the public agency shall proceed in the manner provided by chapter 6B. Any interests in property acquired are acquired for a public purpose, as defined in chapter 6A, of the condemning public agency, and the payment of the costs of the acquisition may be made pursuant to the agreement or to any separate agreement between the public agency and the entity or the other public agencies participating in the entity or any of them. Upon payment of costs, any property acquired is the property of the entity.

Sec. 29. Section 327I.7, subsection 4, Code 2005, is amended to read as follows:

4. Exercise the power of eminent domain consistent with the provisions of chapters 6A and 6B.

Sec. 30. Section 330A.8, subsection 11, Code 2005, is amended to read as follows:

11. To have the power of eminent domain, ~~such power to be exercised in the manner provided by law for municipal corporations of this state~~ but only as provided in section 330A.13.

Sec. 31. Section 346.27, subsection 9, paragraph b, Code 2005, is amended to read as follows:

b. To acquire in the corporate name of the authority the fee simple title to the real property located within the area by purchase, gift, devise, or by the exercise of the power of eminent domain consistent with the provisions of chapters 6A and 6B, or to take possession of real estate by lease.

Sec. 32. Section 364.4, subsection 1, Code 2005, is amended to read as follows:

1. Acquire, hold, and dispose of property outside the city in the same manner as within. However, the power of a city to acquire property outside the city does not include the power to acquire property outside the city by eminent domain, except for the following, subject to the provisions of chapters 6A and 6B:

- a. The operation of a city utility as defined in section 362.2.
- b. The operation of a city franchise conferred the authority to condemn private property under section 364.2.
- c. The operation of a combined utility system as defined in section 384.80.
- d. The operation of a municipal airport.
- e. The operation of a landfill or other solid waste disposal or processing site.
- f. The use of property for public streets and highways.
- g. The operation of a multistate entity, of which the city is a participating member, created to provide drinking water that has received or is receiving federal funds, but only if such property is to be acquired for water transmission and service lines, pump stations, water storage tanks, meter houses and vaults, related appurtenances, or supporting utilities.

The exceptions provided in paragraphs "a" through "c" apply only to the extent the city had this power prior to July 1, 2006.

Sec. 33. Section 389.3, unnumbered paragraph 2, Code 2005, is amended to read as follows:

A joint water utility is a political subdivision and an instrumentality of municipal government. The statutory powers, duties, and limitations conferred upon a city utility apply to a joint water utility, except that title to property of a joint water utility may be held in the name of the joint water utility. The joint water utility board shall have all powers and authority of a city with respect to property which is held by the joint water utility. A joint water utility shall have the power of eminent domain, including the powers, duties, and limitations conferred upon a city in chapters 6A and 6B, for the purposes of constructing and operating a joint water utility.

Sec. 34. Section 403.2, subsection 4, Code 2005, is amended to read as follows:

4. It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and for which the power of eminent domain, to the extent authorized, and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

Sec. 35. Section 403.5, subsection 4, paragraph b, subparagraph (2), Code 2005, is amended to read as follows:

(2) If it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives.

PARAGRAPH DIVIDED. The acquisition of open land authorized in subparagraphs (1) and (2) may require the exercise of governmental action, as provided in this chapter, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, or because of the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area. If such governmental action involves the exercise of eminent domain authority, the municipality is subject to the limitations of this chapter and chapters 6A and 6B.

Sec. 36. Section 403.5, subsection 4, unnumbered paragraph 2, Code 2005, is amended by striking the unnumbered paragraph.

Sec. 37. Section 403.6, subsection 3, Code 2005, is amended to read as follows:

3. Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property, or personal property for administrative purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter: ~~Provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project, unless the legislature shall specifically so state. A municipality or other public body exercising powers under this chapter with respect to the acquisition, clearance, or disposition of property shall not be restricted by any other statutory provision in the exercise of~~

such powers unless such statutory provision specifically states its application to this chapter or unless this chapter specifically applies restrictions contained in another statutory provision to the powers that may be exercised under this chapter.

Sec. 38. Section 403.7, Code 2005, is amended to read as follows:

403.7 CONDEMNATION OF PROPERTY.

1. A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this chapter, subject to the limitations on eminent domain authority in chapter 6A. However, a municipality shall not condemn agricultural land included within an economic development area for any use unless the owner of the agricultural land consents to condemnation or unless the agricultural land is to be acquired for industry as that term is defined in section 260E.2 the municipality determines that the land is necessary or useful for any of the following:

a. The operation of a city utility as defined in section 362.2.

b. The operation of a city franchise conferred the authority to condemn private property under section 364.2.

c. The operation of a combined utility system as defined in section 384.80.

2. A municipality may shall exercise the power of eminent domain in the manner provided in chapter 6B, and Acts amendatory to that chapter or supplementary to that chapter, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner. However, real property belonging to the state, or any political subdivision of this state, shall not be acquired without its consent, and real property or any right or interest in the property owned by any public utility company, pipeline company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall not be acquired without the consent of the company, or without first securing, after due notice to the company and after hearing, a certificate authorizing condemnation of the property from the board, commission, or body having the authority to grant a certificate authorizing condemnation.

3. In a condemnation proceeding, if a municipality proposes to take a part of a lot or parcel of real property, the municipality shall also take the remaining part of the lot or parcel if requested by the owner.

Sec. 39. Section 403A.3, subsection 4, Code 2005, is amended to read as follows:

4. To lease or rent any dwellings, accommodations, lands, buildings, structures or facilities embraced in any project and (subject to the limitations contained in this chapter with respect to the rental of dwellings in housing projects) to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property subject to section 403A.20; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance, in any stock or mutual company of any real or personal property or operations of the municipality against any risks or hazards; to procure or agree to the procurement of federal or state government insurance or guarantees of the payment of any bonds or parts thereof issued by a municipality, including the power to pay premiums on any such insurance.

Sec. 40. Section 403A.20, Code 2005, is amended to read as follows:

403A.20 CONDEMNATION OF PROPERTY.

A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with a municipal housing project under this chapter, subject to the limitations on eminent domain authority in chapter 6A. A municipality ~~may~~ shall exercise the power of eminent domain in

the manner provided in chapter 6B, and acts amendatory thereof or supplementary thereto, ~~or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain.~~ Property already devoted to a public use may be acquired in like manner:— ~~Provided, that no. However,~~ real property belonging to the state, or any political subdivision thereof, ~~may shall~~ not be acquired without its consent, ~~provided further that no and~~ real property or any right or interest ~~therein in the property~~ owned by any public utility company, pipeline company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall not be acquired without the consent of ~~such the~~ company, or without first securing, after due notice to ~~such the~~ company and after hearing, a certificate authorizing condemnation of such property from the board, commission, or body having the authority to grant a certificate authorizing condemnation.

Sec. 41. Section 422.7, Code Supplement 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 45. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

Sec. 42. Section 422.35, Code Supplement 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 22. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

Sec. 43. Section 422.73, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Notwithstanding subsection 1, a claim for credit or refund of the income tax paid on the gain realized from the involuntary conversion of property due to a condemnation action is timely filed with the department as provided in this subsection if the taxpayer's claim is the result of the reacquisition by the taxpayer, as the prior owner, of the property condemned pursuant to section 6B.56, subsection 2, or section 6B.56A. The claim under this subsection shall be timely filed only if the claim is made prior to the end of the sixth month following the month in which the reacquisition occurs.

Sec. 44. Section 468.128, Code 2005, is amended to read as follows:

468.128 IMPOUNDING AREAS AND EROSION CONTROL DEVICES.

Levee and drainage districts are empowered to construct impounding areas and other flood and erosion control devices to protect lands of the district and drainage structures and may provide ways for access to improvements for the operation or protection thereof, where the cost is not excessive in consideration of the value to the district. Necessary lands or easements may be acquired within or without the district by purchase, lease or agreement, or by exercise of the right of eminent domain as provided for in chapter 6B and may be procured and con-

struction undertaken either independently or in co-operation with other districts, individuals, or any federal or state agency or political subdivision.

Sec. 45. Section 468.146, subsection 1, Code 2005, is amended to read as follows:

1. When a drainage district is established and a satisfactory outlet cannot be obtained except through lands in an adjoining county, or when an improved outlet cannot be obtained except through lands downstream from the district boundary, the board shall have the power to purchase a right of way, to construct and maintain such outlets, and to pay all necessary costs and expenses out of the district funds. The board shall have similar authority relative to the construction and maintenance of silt basins upstream from the district boundary. In case the board and the owners of the land required for such outlet or silt basin cannot agree upon the price to be paid as compensation for the land taken or used, the board is hereby empowered to exercise the right of eminent domain as provided for in chapter 6B in order to procure such necessary right of way.

Sec. 46. Section 468.366, Code 2005, is amended to read as follows:

468.366 SETTLING BASIN — CONDEMNATION.

If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams running into, through, or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided in chapter 6B for the exercise of the right of eminent domain.

Sec. 47. CODE EDITOR DIRECTIVE.

1. The Code editor is directed to make the following transfers:
  - a. Section 6B.10 to become subsection 2 of section 6B.9.
  - b. Section 6B.20 to become subsection 4 of section 6B.18.
  - c. Section 6B.27 to become subsection 2 of section 6B.26.
  - d. Sections 6B.39 and 6B.41 to become subsections 3 and 4, respectively, of section 6B.38.
  - e. Section 6B.43 to become unnumbered paragraph 3 of section 6B.4.
  - f. Sections 6B.47 through 6B.51 to become subsections 2 through 6, respectively, of section 6B.46.
  - g. Section 6B.58 to become subsection 2 of section 6B.1.
2. The Code editor is directed to correct internal references in the Code as necessary due to enactment of this section.

Sec. 48. Section 6B.4A, Code 2005, is repealed.

Sec. 49. EFFECTIVE AND APPLICABILITY DATES.

1. The section of this Act enacting section 422.73, subsection 3, being deemed of immediate importance, takes effect upon enactment and applies to reacquisitions of property occurring on or after the effective date of that section of this Act.
2. The sections of this Act enacting section 422.7, subsection 45, and section 422.35, subsection 22, apply retroactively to January 1, 2006, for tax years beginning on or after that date.
3. The sections of this Act amending sections 6B.2B and 6B.14, unnumbered paragraph 2, the portion of the section of this Act amending section 6B.54, subsection 3, and the section of this Act enacting section 6B.2D take effect January 1, 2007.
4. The sections of this Act amending section 6B.3, subsection 3, section 6B.56, subsection 2, sections 6B.57 and 6B.58, being deemed of immediate importance, take effect upon enactment.

5. The remainder of this Act, being deemed of immediate importance, takes effect upon enactment and applies to applications for condemnation filed pursuant to section 6B.3 on or after the date of enactment, with the following exceptions:

a. The section of this Act enacting section 6A.23 applies to applications for condemnation pending on the date of enactment of this Act if the appropriate parties have not been served with a notice of assessment pursuant to section 6B.8 as of the date of enactment of this Act.

b. The section of this Act amending section 6B.33 and that portion of the section of this Act enacting 6B.54, subsection 12, apply to applications for condemnation filed pursuant to section 6B.3 and pending on the date of enactment of this Act if the appraisal report required under section 6B.14 has not been filed with the sheriff as of the date of enactment of this Act.

Passed on reconsideration over the Governor's veto on July 14, 2006.

Christopher C. Rants  
*Speaker of the House*

John P. Kibbie  
*President of the Senate*

Jeffrey M. Lamberti  
*President of the Senate*

I hereby certify that this bill originated in the House and is known as House File 2351, Eighty-first General Assembly, and was passed on reconsideration over the Governor's veto on July 14, 2006.

Margaret Thomson  
*Chief Clerk of the House*